

**No. 23-11900**

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**IN THE UNITED STATES COURT OF APPEALS FOR THE  
ELEVENTH CIRCUIT**

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Sionic Mobile Corporation, *Appellant/Defendant*,

v.

Berkeley Ventures II, LLC, *Appellee/Plaintiff*.

Appeal from the United States District Court for the Northern District  
of Georgia, Atlanta Division, No. 1:19-cv-05523-VMC

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**APPELLANT SIONIC'S RESPONSE TO APPELLEE'S MOTION  
TO DISMISS AND TO STAY MERITS BRIEFING**

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Ventures II, LLC**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

- Baker, Richard J., former Counsel for Appellant/Defendant Sionic Mobile Corporation and former Defendant Ronald D. Herman
- Berkeley Ventures II, LLC, Appellee/Plaintiff
- Burch, Carolyn “Tippi” Cain, Counsel for Appellant/Defendant Sionic Mobile Corporation and former Defendant Ronald D. Herman
- Busch, Bryan E., former Counsel for Appellee/Plaintiff Berkeley Ventures II, LLC
- Calvert, Victoria M., United States District Court Judge for the Northern District of Georgia
- Godwin, Jason Brian, Counsel for Appellee/Plaintiff Berkeley Ventures II, LLC
- Herman, Ronald D., former Defendant and CEO of Defendant Sionic Mobile Corporation

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- Jenner, Simon, former Counsel for Appellant/Defendant Sionic Mobile Corporation and former Defendant Ronald D. Herman
- Mirmelli, Laura H., former Counsel for Appellee/Plaintiff Berkeley Ventures II, LLC
- Parker, Wilmer “Buddy” III, Counsel for Appellee/Plaintiff Berkeley Ventures II, LLC
- Sionic Mobile Corporation, Appellant/Defendant

No parent corporation and no publicly held corporation owns 10% or more of stock of Appellant/Defendant Sionic Mobile Corporation.

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Appellant Sionic timely appealed the district court’s May 9, 2023 order denying its Rule 60(b) motion, (Doc. 274), by filing its June 8, 2023 Notice of Appeal (Doc. 275). *See* Fed. R. App. P. 3(a)(1), 4(a)(1)(A), and 26(a)(1). Sionic concedes that its Notice of Appeal was not timely as to the district court’s earlier orders and December 16, 2022 judgment.

Further, Sionic’s appeal of the district court’s denial of its Rule 60(b) motion is properly before this Court. Sionic’s Rule 60(b) motion was based, in large part, on facts that arose *after* the district court’s December 16, 2022 judgment – namely that Sionic had obtained counsel. (*See* Doc. 266 – including in Exhibit A to Appellee’s Motion to Dismiss). As such, the appeal of the district court’s denial of Sionic’s Rule 60(b) motion presents an error different than the error(s) that could have been presented to this Court in a direct appeal of the district court’s December 16, 2022 judgment and does not run afoul of the

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prohibition of raising a challenge through a Rule 60(b) motion “which could have been raised on direct appeal.” *American Bankers Ins. Co. v. Northwestern Nat’l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999).

Accordingly, Sionic’s appeal of the district court’s denial of its Rule 60(b) motion is properly before this Court.

Sionic joins Berkeley’s request that this Court stay the merits briefing schedule until the resolution of this motion.

This 21st day of July, 2023.

Respectfully submitted,

/s/ Carolyn C. Burch

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**CERTIFICATE OF COMPLIANCE**

This response to a motion complies with the typeface and type style requirements and the type-volume limits of Fed. R. App. P. 27(d)(2)(A) because it contains 707 words.

/s Carolyn C. Burch  
Carolyn C. Burch  
Georgia Bar No. 094515

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2023, I served the within and foregoing **APPELLANT SIONIC’S RESPONSE TO APPELLEE’S MOTION TO DISMISS AND TO STAY MERITS BRIEFING** by electronically filing it with this Court’s ECF system, which constitutes service on the following attorneys who have appeared in this case and are registered CM/ECF participants:

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/s/ Carolyn C. Burch

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